IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

WP(C).No. 1721 of 2007(E)

E.P.580/05 IN
O.S.376/86 OF MUNSIFF COURT, THIRUVANANTHAPURAM

PETITIONER:

M.ROBINSON, S/O.MANAS,
T.C.6/635 (NEW TC 38/871), MALMAR KUZHIVILA VEEDU,
VATTIYOORKAVU, TRIVANDRUM.

BY ADV. SRI.K.P.JAYACHANDRAN

RESPONDENTS:

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1. KOCHAPPI KUTTAN,
S/O.KANNA KUNJI, KUZHIVILA PURAYIDAM,
MOOTHANDA MURI, ACHAMADA VILLAGE.

2. KOCHAPPI RAGHAVAN,
KUZHIVILA PURAYIDAM, MOOTHANDA MURI,
ACHAMADA VILLAGE.

3. KUNJI PANKAJAM,
KUZHIVILA PURAYIDAM, MOOTHANDA MURI,
ACHAMADA VILLAGE.

4. KUNJI ANANDAVALLY,
KUZHIVILA PURAYIDAM, MOOTHANDA MURI,
ACHAMADA VILLAGE.

5. B.HARIKUMAR,
MEENATTOOR HOUSE, MEENATTU, FLAT NO.28,
PATTAM THANUPILLAI HOUSING COLONY,
VATTIYOORKAVU, TRIVANDRUM.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.1721 OF 2007

Dated 15th January 2007

J U D G M E N T

It is represented by learned counsel appearing for petitioner that petitioner has already filed a petition today before executing court under Rule 99 of Order XXI of Code Civil Procedure contending that he is kudikidappukaran and as per preliminary decree the question of kudikidappu right of petitioner was left open to be decided at the execution stage and therefore petitioner cannot be evicted by directing delivery. This petition is filed under Article 227 of Constitution of India for a direction to the executing court not to order delivery of petitioner before deciding the claim of kudikidapu raised by petitioner.

2. A preliminary decree for redemption of the mortgage was granted by IIIrd Additional Munsiff, Thiruvananthapuram in O.S.376/86. Ext.P1 judgment shows that mortgagee defendants raised a contention in the suit that petitioner herein is a kudikidappukaran

and question of kudikidappu is to be referred to Land Tribunal. It also shows that learned Munsiff while granting preliminary decree, directed that the question regarding kudikidappu is to be considered at the time of execution. Case of petitioner is that subsequently mortgagee defendants filed a rent control petition to evict petitioner and though an order of eviction was granted by Rent Control court, in the appeal that order was set aside and now mortgagees are colluding with mortgagor and as a result delivery was ordered in execution proceedings and petitioner is sought to be evicted by said order. All these questions are to be considered by Munsiff court. If petitioner has filed a petition before executing court as represented, executing court has to consider the claim of petitioner that he is kudikidappukaran. The question whether the building in his possession can be delivered in execution of the decree is to be considered by learned Munsiff before directing delivery in the light of the contentions of defendants in the suit and the preliminary decree.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.